RECENT IMPORTANT DECISIONS

ACKNOWLEDGMENT.—UNDER A STATUTE REGULATING ACKNOWLEDGMENTS BY MARRIED WOMEN—AN EXAMINATION MADE OVER TELEPHONE IS NOT SUFFICIENT.—In a question involving the validity of a mortgage deed, it appeared that the acknowledgment of a Mrs. Bertholf had been taken by means of telephone. The court, in construing the Idaho statute regulating acknowledgments of married women, *held* that the clear intent of the statute was that all acknowledgments should be taken in person before the magistrate, and any attempted acknowledgment not taken in person, though correct in form and without suspicion of fraud, was void, being beyond the power of the officer. *Myers* v. *Eby* (Idaho, 1920), 193 Pac. 77.

That so common a method of taking acknowledgments should be found void is perhaps startling, yet seems in entire accord with the great weight of authority. Privy examinations of married women taken by telephone have generally been held invalid. *Roach* v. *Francisco,* 138 Tenn. 357, 197 S. W. 1099, refuses to allow such a practice upon the general basis that their statute had not been passed at the time of the inauguration of telephones, and acknowledgments by such means could not have been within the purview of the legislature? *Wester* v. *Hurt,* —— Tenn. ——, 130 S. W. 1099, decides against such a practice on the ground that judicial determination has decided that such examinations must be personal. The chief authority for a different view is *Banning* v. *Banning,* 80 Cal. 271, 13 Am. St. Rep. 156, where the court states the unmistakable view that an acknowledgment made by telephone may be valid and the facts in it may not be impeached so long as there are no errors in form and no evidence of fraud is produced. The statute in that case and that in the principal case are similar, and there is no more basis for regarding the necessity for personal appearance greater in one case than in the other because of the mere wording of the statutes. Although in *Banning* v. *Banning* the wife is attempting to avoid the deed on the ground that acknowledgment was made over the telephone, the court does not put its decision upon the basis of estoppel, but takes the stand that such an acknowledgment is sufficient to satisfy the statute. While such a practice might prove expeditious and is already much used, the dangers of such a course appear in *Sullivan* v. *First Nat. Bank,* 37 Tex. Civ. App. 228, where the court says that the safeguards given in the requirement of acknowledgment lie in the fact that the officer knows the person making the oath and stating the deed to be his own. If the officer is forced to receive the acknowledgment by telephone, in very few cases he is in a position to identify the speaker and must accept the statement of the speaker as to his identity. Thus, when the question later arises as to whether the one whose name was used in the deed made the aknowledgment, there is no means of determining whether the identity of the one whose name was used in the acknowledgment is the same as the one using the telephone to secure the

acknowledgment. The court in the principal case seems justified in construing the statute so as to secure better means of obtaining satisfactory evidence that the one making the acknowledgment is the same person described in the instrument.

AUTOMOBILES—CONTRIBUTORY NEGLIGENCE OF THE GUEST IN FAILING TO WARN THE DRIVER OF IMPENDING DANGER.—The plaintiff was riding as a guest in the defendant's automobile. The windshield of the car was frosted so that neither was able to see that a crossing was blocked by a standing train until too late to avoid collision. The plaintiff had warned the defendant of the excessive speed at which he was driving, but testified that he did not know whether or not the defendant had heard his protest. The plaintiff knew the position of the railroad crossing, but did not remonstrate with the defendant in regard to the manner in which he was approaching it. *Held,* that the plaintiff was guilty of contributory negligence as a matter of law. Failure on the part of the guest to see that the driver is keeping a proper lookout or to protest the negligent manner in which the car is being driven will bar a recovery from the driver in case of injury. *Howe* v. *Corey* (Wis., 1920), 179 N. W. 791.

The driver of an automobile owes a duty to his invited guest to exercise ordinary care not to increase the danger ordinarily incident to driving; and if he fails to exercise such duty he is liable for the injury proximately resulting. *Perkins* v. *Galloway,* 198 Ala. 658, affirming 194 Ala. 265; *Beard* v. *Klusmeier,* 158 Ky. 153. And it seems that the guest, likewise, owes a duty to use reasonable care for his own safety. *Penn. Ry.* v. *Henderson,* 179 Fed. 577. But what does this duty require of the guest? The Indiana court has held that it is not necessary for him to jump out of the car. *Union Traction Co.* v. *Love,* 180 Ind. 442. Nor is he required to ask permission to get out. *Turney* v. *United Rys. Co. of St. Louis,* 155 Mo. App. 513. And the Rhode Island court does not even require the guest to *protest* when the car is being driven at an excessive speed. *Herman* v. *Rhode Island Co.,* 36 R. I. 447. However, the principal case would seem to place a burden upon the guest not only of protesting an excessive rate of speed but also of continuing to protest until he is certain that his complaints have come to the knowledge of the driver. Furthermore, he must remonstrate with the driver in regard to the manner in which each new situation of danger is approached in order not to assume the risk of possible resulting injury. It appears to the writer that such a rule is quite contrary to the dictates of sound reason and common experience. It, in effect, places a burden upon the guest of electing between becoming a "back seat driver" or his own insurer against all the perils encountered during the drive.

CARRIERS—LIABILITY FOR LOST BAGGAGE—PASSENGER FROM ADJACENT FOREIGN COUNTRY.—The plaintiff was on a journey from Canada to El Paso, Texas, traveling on a coupon ticket to El Paso and return, with a stop-over privilege of which she availed herself at San Antonio. She checked her